

Deposition of James Partin

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

JON CHRISTOPHER EVANS
AND JOINTLY ADMINISTERED
RELATED CASES

Case No. 09-03763-NPO

DEBTORS.

Chapter 7

G&B INVESTMENTS, INC.

PLAINTIFF

V.

ADV. PROC. NO. 10-00040-NPO

DEREK A. HENDERSON, TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
JON CHRISTOPHER EVANS, ET AL.

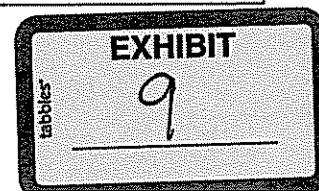
DEFENDANTS

30(b)(6) DEPOSITION OF
MISSISSIPPI VALLEY TITLE INSURANCE COMPANY,
THROUGH ITS REPRESENTATIVE,
JAMES D. PARTIN

Taken at the offices of
Adams and Reese,
111 Capitol Street, Suite 350,
Jackson, Mississippi,
on Tuesday, November 23, 2010,
beginning at approximately 9:00 a.m.

APPEARANCES NOTED HEREIN
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COUNSEL FOR HERITAGE BANK:

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ALSO PRESENT:

DONALD JOSEPH BRATA

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1 A. I think -- Item 2 and Item 3, I think
2 I mentioned.

3 Q. Okay. Can you explain how
4 Mississippi Valley considers Bank of Forest not to
5 have complied or fulfilled the requirements of
6 Item 2?

7 A. As I understand, Bank of Forest sent
8 the loan proceeds to Charles Evans, and Charles
9 Evans may not have actually transmitted the loan
10 funds to the borrower.

11 Q. Do you know where Mr. Evans
12 transferred the loan proceeds?

13 A. They were all commingled in his
14 escrow account, and I think a lot of people are
15 still looking to where those funds went.

16 Q. I think that's true.
17 Do you have any knowledge -- or does
18 Mississippi Valley have any knowledge as to where
19 the consideration -- or loan proceeds may have
20 been sent, if not to the borrower?

21 A. No. They were all commingled in
22 Evans' escrow account and checks were -- you know,
23 I can tell you that checks were flying out of
24 there for all kinds of different things, including
25 interest payments and apparently personal

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1 expenses.

2 Q. Is there any document or other
3 evidence, that you're aware of on behalf of the
4 company now, that this -- these loan proceeds
5 didn't get to the borrower?

6 A. I don't think the borrower ever had
7 an account. I don't think I've ever seen a -- we
8 would have to go back and look, but I don't think
9 we've ever seen a check to Hanover -- I'm sorry,
10 White Oaks.

11 Q. Item 3, mechanics' or materialmen's
12 liens. Can you explain to me how Mississippi
13 Valley feels Bank of Forest failed to comply with
14 the requirements of Item 3?

15 A. We required an affidavit from the
16 borrower and did not get that affidavit.

17 Q. When you say "affidavit," you just
18 mean an owners and -- owners and contractors
19 affidavit?

20 A. Of no construction.

21 Q. One of the three sisters documents
22 that are generally signed at every closing?

23 A. I don't know what the three sisters
24 are, but the affidavit stating that there's no
25 construction on the property for a certain period

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1 that a particular entity is vested in title other
2 than, if you comply with the requirements of the
3 commitment, we will issue a policy pursuant to
4 whatever exceptions are not complied with.

5 Q. In this particular instance, the 2009
6 White Oaks loan, Charles Evans prepared a
7 certificate of title and sent it to Mississippi
8 Valley, correct?

9 A. Correct.

10 Q. And Mississippi Valley took the
11 information from that certificate of title and
12 put it in their commitment and sent it back to
13 Charles Evans to be delivered to Bank of Forest;
14 is that right?

15 MR. JONES: Mr. Fortenberry testified
16 on all this stuff, too. I'll give you -- if
17 you're just setting up a question, that's fine,
18 but he testified as to all this last week.

19 THE WITNESS: I believe that's what
20 Mr. Fortenberry testified to, yes.

21 MR. DEAS, CONTINUED:

22 Q. Sitting here, can you think of any
23 way that the proposed insured in this instance,
24 the Bank of Forest, could have known that the
25 written statement in Mississippi Valley's

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1 commitment, the fee simple title, in the land
2 vested in G&B Investments was inaccurate, other
3 than doing another title search?

4 A. They could have asked Chris or
5 Charles Evans, I think.

6 Q. So -- and Charles being the one who
7 issued the flawed certificate of title to
8 Mississippi Valley in the first place?

9 A. Yes.

10 Q. Other than that, can you think of any
11 way they might have known?

12 A. They might have called G&B and asked
13 them if they were going to give a deed for this
14 property.

15 Q. Fair enough. Mississippi Valley has
16 taken the position with several pleadings, and I
17 think in Mr. Fortenberry's deposition, that this
18 commitment is not a statement of the quality of
19 title or an abstract of title, based on a -- on a
20 condition, No. 4 on page 2. If I could get you to
21 look at Condition 4.

22 A. (Reviews document.) Yes.

23 Q. They've cited that. Now, do you have
24 any knowledge as to why that condition was
25 included in the condition language in these

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1 as a party?

2 A. I don't know that that's the case.

3 G&B -- it probably would have been best practice
4 to include G&B. But I think we did defend against
5 the G&B claims, and now those claims have been
6 resolved.

7 Q. Those claims have been resolved now,
8 in 2010, right?

9 A. Yes.

10 Q. Okay. By way of the title resolution
11 order entered last month?

12 A. And the trustee's settlement with
13 G&B.

14 Q. Okay. And I guess my -- and I
15 appreciate that, but I guess my -- maybe my
16 question was bad, and I'll try to ask it again.

17 How did Mississippi Valley intend to
18 cure the title deficiencies, or title issues, with
19 regard to the 2008 White Oaks collateral without
20 including all the parties who had lawsuits pending
21 of record related to that parcel?

22 MR. JONES: And I would object to the
23 extent that it calls for revealing any
24 attorney-client privilege regarding matters that
25 our law firm was retained to handle. You can ask

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1 him about communications that they may have had
2 with Gene Berry or Todd Burwell, who was retained
3 for the Bank of Forest, but I don't believe you're
4 entitled to any curative actions that our law firm
5 has been involved in.

6 MR. DEAS, CONTINUED:

7 Q. Was Adams & Reese working for
8 Mississippi Valley Title with regard to these
9 claims at the time that Gene Berry filed the
10 lawsuit attempting to cure the problems with the
11 2008 White Oaks loan?

12 MR. JONES: What was the date of that
13 lawsuit? Do you have it?

14 MR. DEAS: I believe it was September
15 the 19th or so, 2- -- September 24th, maybe.
16 Somewhere right in that area, 2009.

17 MR. JONES: I can stipulate we filed
18 an action against Charles Evans on September 18th.
19 How about that?

20 MR. DEAS, CONTINUED:

21 Q. I don't -- I don't -- if that's -- if
22 that's the case, that Adams & Reese was working
23 for Valley at that point in time, I don't want to
24 know anything about Valley's communications with
25 Adams & Reese. What I'm asking is -- well, what

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1 MR. DEAS, CONTINUED:

2 Q. What's the -- what's the total amount
3 of the bond?

4 A. 75 million over a \$5 million
5 retention.

6 Q. So it -- in layman's terms,
7 \$5 million self-insurance?

8 A. Yes.

9 MR. DEAS: That's all I have for you.
10 Thank you, Mr. Partin.

11 THE WITNESS: You're welcome.

12 EXAMINATION

13 BY MR. CORY:

14 Q. Mr. -- is it Partin? I wasn't here
15 when --

16 A. Yes.

17 Q. Did I pronounce that correctly?

18 A. Yes.

19 Q. I'm Michael Cory, and I represent
20 G&B, and I just have a few questions for you this
21 morning. Or this afternoon now.

22 Generally speaking, can you tell me
23 what -- just in very general terms, what the
24 purpose of an owner's title insurance policy is?

25 A. It's to ensure owner's title.

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1 Q. Does an owner's title insurance
2 policy -- is there some point in time or some
3 event that occurs when the coverage obligations
4 terminate under an owner's policy?

5 A. Yes, and --

6 Q. That may be too --

7 A. Yes and no. Not necessarily by
8 operation of the policy. But in general terms,
9 the policy protects the insured while they own the
10 property, and if they sell the property, it may
11 protect them against any warranty claims against
12 that insured.

13 Implicit in that is that if they sell
14 it, for instance, by quitclaim deed, there's very
15 little potential or no potential for any warranty
16 claim. So not necessarily as a part and parcel of
17 the policy, but there would not be any potential
18 for claims at that point.

19 Also, the policy has certain company
20 exceptions, exclusions, and things like that that,
21 even while the owner is still in title, may
22 exclude coverage. It's, frankly, a complicated
23 document, and as you might have heard, you just
24 have to look at the facts of each individual
25 property and transaction to determine whether

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1 there is coverage.

2 Q. But there are -- there is coverage
3 that may survive even after the owner transfers or
4 sells or conveys title to the insured property?

5 A. Yes.

6 Q. In this particular case with G&B,
7 did -- an owner's policy was issued to G&B for
8 property that was sold literally at the same
9 time -- or simultaneous with the -- I mean, the
10 policy issued actually after the fact on a land
11 transaction where the owner was selling the
12 property, so the -- were you aware of that in this
13 particular case?

14 MR. BRABEC: Object to the form.

15 THE WITNESS: Even though the policy
16 may have been issued after the transaction, the
17 effective date of the policy, I believe, was a day
18 or two before the transaction where G&B sold
19 the property.

20 MR. CORY, CONTINUED:

21 Q. And my question -- I'm not trying to
22 say when it was effective or not effective. But
23 you're aware that in this case, the owner's policy
24 was issued to an owner for a transaction where the
25 owner was selling at essentially the same time the

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1 policy was issued?

2 A. No, it was issued with an effective
3 date prior to the date of the transaction where
4 the insured sold it. The key in any title
5 insurance policy is the effective date. Anything
6 that happens -- generally speaking, with few
7 exceptions, whatever happens after the effective
8 date is not covered.

9 Q. Is it normal to issue -- so there's
10 nothing unusual about an owner's policy being
11 issued the day before a transaction, then?

12 A. Yes, it is unusual.

13 Q. Tell me what makes that unusual, in
14 your mind.

15 A. Well, if an insured gets an owner's
16 policy, they typically get it when they buy the
17 property, when they acquire the property.

18 Q. And I'm going to ask you to
19 speculate, but -- so I may get an objection as
20 well on that. But what would be the reasons you
21 might see, other than just a scrivener's error on
22 the date, that an owner's policy would be issued
23 the day before the closing date, like we had here?
24 Or are you aware of any other reason that that
25 might occur other than in error?

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1 A. Not necessarily a scrivener's error.
2 I mean, we understand the policy was issued with
3 the effective date of -- I think it was July 22nd.
4 And it's just very unusual for a policy to be
5 issued that late in the ownership.

6 Q. Have you ever seen -- in your
7 experience, have you ever seen an owner's policy
8 issued to an owner within 24 hours of the closing
9 of a transaction where the owner actually vested
10 himself of title?

11 A. No, I haven't.

12 Q. Do you -- does -- do you have any
13 information or does Valley have any information or
14 knowledge as to why that was done in this case?

15 A. I don't have any knowledge. I've
16 seen some speculation that there was some problem
17 that there was -- that somebody at Watkins & Eager
18 suggested it might be advantageous to get an
19 owner's policy.

20 Q. Now, as far as the protection that
21 the policy provides in a situation like we have
22 here where G&B sold the policy the next day --

23 A. Sold the policy?

24 Q. I mean, sold the property,
25 transferred the title to the property the day

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1 A. I'm not sure who closed that
2 transaction. Seems to me that there were several
3 other lawyers involved. I know McGlinchey was
4 involved. There was another firm, I believe. I'm
5 not sure who actually closed that transaction.
6 Watkins & Eager issued the owner's policy.

7 EXAMINATION

8 BY MR. SIMMONS:

9 Q. Good afternoon. I'm Mike Simmons. I
10 represent Heritage Banking Group, and I've got
11 some questions for you.

12 Were you involved at all in
13 investigating or adjusting the claim made by
14 Heritage Bank under the lender's title policy?

15 A. Generally speaking, yes.

16 Q. Okay. Can you tell me what your
17 involvement was?

18 A. Really, it was fairly routine. We
19 decided to pay the claim under the policy and got
20 an appraisal and paid Heritage Bank \$430,000.

21 Q. Do you have an understanding of what
22 the title defect was? And this is a loan from
23 Heritage Bank to Twinbrook Run Development
24 Company, LLC, which was an entity owned by
25 Jon Christopher Evans. Do you have an

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1 understanding of the problem with the title in
2 that matter?

3 A. Honestly, I don't remember, although
4 I think there was a prior lien.

5 Q. Okay.

6 A. Generally.

7 Q. As I understand it, the title to
8 that tract, which I think has been variously
9 identified -- and in this action, we're calling it
10 Tract T-6. Title to that particular tract went
11 from G&B to Hanover to Lansdowne Group, and then
12 Lansdowne Group gave the deed of trust to
13 BankFirst, but title was never conveyed to
14 Twinbrook Run Development. Does that sound
15 familiar?

16 A. Yes.

17 Q. Okay. Under the title policy issued
18 to Heritage Banking Group -- I've got a copy of it
19 here, if you'd like. It's not a very good copy,
20 but it's. . .

21 Under this title policy, it's my
22 understanding there is -- there are a variety of
23 provisions within the policy under which
24 Mississippi Valley Title can pay a claim. Is that
25 generally correct?

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1 agree you're not insuring that the bank is not
2 going to lose money on its loan to its borrower,
3 correct?

4 A. Generally speaking, that's correct.
5 We insure the value of the property, not the
6 payment of the loan in full. If that's what
7 you're asking.

8 Q. That's exactly what I was asking.

9 The -- would you agree that the
10 security, that being the property that was subject
11 to the loan from Heritage to Twinbrook Run
12 Development, from Heritage Bank's perspective, the
13 title was worth nothing, correct?

14 A. For the sake of this payment, we
15 assumed it was worth nothing, as effected by the
16 other lien and the title defect.

17 Q. And it was never worth anything,
18 correct?

19 A. Not necessarily. If the Evanses had
20 paid off the prior lien, it would have been worth
21 the value of whatever it was worth.

22 Q. But they -- as far as you know, they
23 did not pay off the prior lien, did they?

24 A. I believe that's correct.

25 Q. And Twinbrook Run Development -- you

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1 agreed with me at the beginning of my questioning,
2 Twinbrook Run Development never had any interest
3 in this property, correct?

4 A. I believe that's correct.

5 Q. So from the title company's
6 perspective, Twinbrook Run Development couldn't
7 convey anything as to this property, could it?
8 Deed of trust, for example?

9 A. It could, but it wasn't effective to
10 create a lien.

11 Q. Wasn't that the purpose of a deed of
12 trust, to create a lien?

13 A. Yes.

14 MR. SIMMONS: That's all I have.
15 Thank you, sir.

16 MR. BRABEC: Let's take a break.

17 (OFF THE RECORD.)

18 MR. CLARK: I'm David Clark, and I'll
19 be representing Mississippi Valley Title with
20 respect to the questioning that M&F Bank does.
21 So. . .

22 MR. RAWLINGS: We're ready?

23 MR. CLARK: And we have -- also,
24 Mr. Partin is designated for just certain of the
25 items in Merchants & Farmers Bank's 30(b)(6)

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1 A. But we have not precluded any
2 additional claims. We'll look at anything. This
3 is an ongoing matter. It always is in these types
4 of situations.

5 Q. Are you aware of any Mississippi
6 Valley or Old Republic procedures that were
7 breached or controls that were -- that failed in
8 this transaction, in the Town Park transaction,
9 as relates to the policy that was issued?

10 MR. CLARK: I'm not sure that's
11 within the -- what he's been designated for. But
12 if he has other information --

13 MR. RAWLINGS: That has to do with
14 the claims process.

15 COURT REPORTER: I'm sorry?

16 MR. RAWLINGS: That has to do with
17 the claims process.

18 THE WITNESS: I'm not aware of any.

19 MR. RAWLINGS, CONTINUED:

20 Q. Do you have an opinion as to how the
21 claims could have been prevented?

22 A. There would have been additional
23 procedures. And that is something that
24 Mississippi Valley, I think, is now addressing.
25 But the truth of the matter is, fraud is fraud,

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1 and no matter what procedures you put in place,
2 fraudsters seem to find a way to get around them
3 and defraud people. So even though we put new
4 procedures in place, people like Charles Evans are
5 going to constantly be finding ways to get around
6 those procedures.

7 Q. Well, that sounds like something more
8 than negligence. Is there an allegation of fraud
9 on your -- on the part of MVT as to Mr. Evans?

10 A. Yes, that's part of our situation.

11 Q. And I think counsel previously
12 touched on a question that I wanted to address.
13 What part of the Town Park transaction in
14 particular would have been a forgery?

15 MR. CLARK: Object to the form.

16 THE WITNESS: I don't recall the
17 specifics of the -- you're talking about the
18 Merchants & Farmers deed of trust, a forgery in
19 that?

20 MR. RAWLINGS, CONTINUED:

21 Q. Yes, sir. In the transaction itself.
22 And I'll give you some predicate facts. At the
23 time that M&F took its deed of trust, that we've
24 all discovered that Hanover was the title owner,
25 and the corrective deed that you addressed earlier

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1 companies do things to mitigate losses under the
2 claims process, correct?

3 A. You mean to mitigate exposure?

4 Q. Front-end prevention, so to speak.

5 A. Yes.

6 Q. Would audits be considered part of
7 that process?

8 A. It is in some cases.

9 Q. When does Mississippi Valley conduct
10 an audit?

11 A. Well, Mississippi Valley didn't have
12 any processes to audit approved attorneys.

13 COURT REPORTER: Audit -- I'm sorry?

14 THE WITNESS: Approved attorneys.

15 MR. RAWLINGS, CONTINUED:

16 Q. Do you now?

17 A. I'm not sure. That's --

18 MR. CLARK: Objection. I don't know
19 that that's --

20 THE WITNESS: That's something that I --

21 MR. CLARK: -- an area of his
22 designation.

23 But go ahead, you can answer.

24 THE WITNESS: I don't know. That's
25 something that I think Mr. Fortenberry spoke to.

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1 I've not investigated that.

2 MR. RAWLINGS, CONTINUED:

3 Q. Now, you've said there are -- there's
4 no audit process for an approved attorney?

5 A. There was, at the time of these
6 transactions, no audit process, that's correct.

7 Q. All right. And at the time of these
8 transactions, was there an audit process in place
9 for agents?

10 A. I believe so. But again,
11 Mr. Fortenberry would speak to that.

12 Q. You have no information or knowledge
13 of the audit process?

14 A. No.

15 MR. CLARK: That's also not his area
16 of designation.

17 THE WITNESS: I've not investigated
18 that.

19 MR. RAWLINGS: Well, I disagree.
20 Number 1, which is one of the ones that he's a
21 co-designee on, deals with all the allegations in
22 the second amended complaint, counter-claims, and
23 cross-claims. But I take it from his answer that
24 he's not familiar with it, so that moots that
25 issue.

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1 claims because they had never had an owner's
2 policy before.

3 Q. But you understood that G&B was
4 taking a lien at the same time?

5 A. I understand that is what happened,
6 yes.

7 Q. Wouldn't it have been the more
8 appropriate policy to be issued at that time?

9 A. Yes.

10 Q. Do you know why it wasn't?

11 A. No.

12 MR. RAWLINGS: Those are all the
13 questions I have.

14 (CONCLUDED AT 2:26 P.M.)
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